

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT CALLENDER II,

Case No. 2:14-cv-02199-KJD-PAL

Plaintiff,

v.

ORDER

DELTA AIR LINES, INC.,

Defendant.

Plaintiff Robert Callender II is proceeding in this action *pro se* and filed a Complaint (Dkt. #1-1) on December 24, 2014. Because the Court granted Plaintiff's request to proceed *in forma pauperis*, the Court screened the Complaint pursuant to 28 U.S.C. § 1915(e). Order (Dkt. #2), filed Mar. 24, 2015. The undersigned found that Plaintiff's Complaint (Dkt. #3) failed to state a valid claim under 42 U.S.C. § 1981, but the Complaint states a colorable claim under Title VII of the Civil Rights Act of 1964. The Court allowed Plaintiff thirty days to file an amended complaint; however, if Plaintiff chose not to do so, the Court stated that service would be directed for the Title VII claim in the original Complaint. *Id.* On April 20, 2015, Plaintiff filed a Motion for Extension of Time (Dkt. #4) to file an amended complaint. The Court granted Plaintiff's request and instructed him to file an amended complaint on or before May 20, 2015. *See* Order (Dkt. #5). Plaintiff opted not to file an amended complaint.

On July 1, 2015, the Court entered a Report of Findings and Recommendation (Dkt. #7), which recommended that this case be dismissed because the original Complaint failed to state a claim upon which relief could be granted and Plaintiff's failed to file an amended complaint as required by the May 6, 2015 Order (Dkt. #7). Plaintiff filed an Objection (Dkt. #8) to the Report of Findings and Recommendation, asserting that the Court erred in finding that he failed to state any valid claim in his original Complaint. A review of the docket reflects that Plaintiff did in


fact state a valid Title VII claim in the original Complaint. Therefore, the Court will vacate and withdraw the Report of Findings and Recommendation (Dkt. #7) and direct issuance of summons and service of the original Complaint.

Accordingly,

IT IS ORDERED:

1. The Report of Findings and Recommendation (Dkt. #7) is WITHDRAWN and SET ASIDE.
2. The Clerk of the Court shall issue summons to Defendant Delta Air Lines, Inc.
3. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service must be accomplished within 120 days from the date this order is entered. Plaintiff is advised to carefully review Rule 4 of the Federal Rules of Civil Procedure which outlines how to properly effectuate service on Defendant.
4. From this point forward, Plaintiff shall serve upon Defendant, or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading motion or other document submitted for consideration by the court. Plaintiff shall include with the original papers submitted for filing a certificate stating the date that a true and correct copy of the document was mailed to the Defendant or counsel for the Defendant. The Court may disregard any paper received by a District Judge or Magistrate Judge that has not been filed with the Clerk, and any paper received by a District Judge, Magistrate Judge, or the Clerk that fails to include a certificate of service.

Dated this 17th day of July, 2015.


PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE